

# The Proposed Affordable Housing Mitigation Fee

## Why is Carlsbad pursuing an Affordable Housing Mitigation Fee on rental housing development?

By state law, all California cities and counties must provide housing opportunities affordable to all income groups. The private market will typically meet the need for affordable housing for upper income households, and often times the moderate income households. In a coastal city such as Carlsbad, however, the private market has not provided housing affordable to low income households without a requirement and/or subsidy. As a result, the City implemented a mandatory inclusionary housing program in 1993. This inclusionary program required developers of both owner and rental housing to work in partnership with the City and provide 15% of their housing units in a manner that is affordable to low income households. This program has resulted in the successful production of nearly 2200 units of high quality, low income affordable housing in Carlsbad.

Recent court decisions restrain the city's ability to continue to provide required housing opportunities affordable to lower income households by not allowing for application of the inclusionary requirement to rental housing, in the absence of a financial or regulatory incentive or concession and a contractual agreement. In response to this court decision limiting the city's options, the City Council directed staff in 2012 to study the nexus between the development of market rate rental housing and any need for additional low income affordable housing, and to determine if there should be any obligation from rental housing developers for at least payment of an impact or mitigation fee to help finance the affordable housing. A nexus study was completed by Keyser Marston Associations, and the study found a nexus that supported adoption of an affordable housing impact (mitigation) fee for rental housing only. An option to paying the mitigation fee will be production of at least 15% of the total housing units in a development as affordable to low income households.

## Why is it necessary to impose an affordable housing mitigation fee on rental housing?

Up until 2009, all housing developers were required to provide for housing affordable to low income households, and they were doing so successfully because they had the land, zoning and expertise to do so. This helped the City to meet its obligations to the State and to its residents. The 2009 court decision ("Palmer"<sup>1</sup>) disallowed Carlsbad from applying inclusionary requirements to apartment projects, unless a regulatory or financial incentive or concession was provided and set forth in a contract between the City and developer. This decision created an inequity among housing developers, with ownership housing developers carrying the financial burden for producing the low income affordable housing. The affordable housing mitigation fee is the city's response, which, in effect, makes the city's inclusionary program "whole" and more equitable again by requiring rental housing developers to financially participate if they don't wish to voluntarily provide the housing. Because the inventory of housing units in Carlsbad is capped due to the growth management plan, the private market will continue to support higher housing prices and rents; this will continue to support the need for development subsidies and regulatory requirements in order to provide for the required low income affordable housing. Without the assistance of the rental housing market, there will be inadequate gap funding available to meet the need.

## What is the justification or "nexus" for the fee?

Carlsbad demographic and land use trends, as well as a strong rental market, point to increasing demand for multi-family housing construction, including apartments, for the foreseeable future.

The underlying nexus concept is that the newly constructed market-rate rental units represent new Carlsbad households. These households represent new income in Carlsbad that will consume goods and services, either through purchases or by "consuming" governmental services. New consumption translates to new jobs; a portion

---

<sup>1</sup> *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*

of the jobs are at lower compensation levels, which translate to lower income households that cannot afford these market-rate units and therefore need housing affordable to them.

## How much is the proposed fee and who would pay it?

The nexus study recommends a fee of \$20,000 per unit or \$20 per square foot of a market-rate rental unit. City staff and the Housing Commission recommend the \$20 per square foot fee. Apartment builders would pay the fee for each market-rate unit built at the time building permits are pulled for construction of the development; builders of ownership housing product would not pay the fee, but meet the mandatory inclusionary obligation.

## Are there fee alternatives?

Rental unit builders that voluntarily provide 15% of the housing development in a product affordable to low income households and have entered into a regulatory agreement to maintain the affordability will not pay the mitigation fee.

## Do other cities charge an affordable housing mitigation or impact fee?

In 2011, Solana Beach approved a \$25.28 per square foot affordable housing impact fee on market-rate rental housing. In parts of the City of San Diego, an impact fee of \$4.98 per square foot is assessed. Most San Diego jurisdictions do not have affordable housing impact fees. Fees that are charged can vary greatly due to a community's land costs and location, policy decisions, and many other variables.

## Is this fee like the City of San Diego's commercial linkage fee?

Recently, the City of San Diego updated its 1990 Housing Impact Fee or linkage fee to reflect 2013, rather than 1990, construction costs. Like Carlsbad, San Diego's fee is based on a nexus study and funds affordable housing. Unlike Carlsbad, San Diego's linkage fee is charged to new commercial development, not new rental housing development.

## How does the City work with housing developers to help provide affordable housing?

The Building Industry Association of San Diego County (BIA) recently shared a toolbox for how cities can help provide for affordable housing. Since 1993, the City has been using many of these tools, including: allowing developer to select product type; allowing participation on or off site (in combined projects); approving standards modifications including density increases; providing financial subsidies; expediting approval of affordable housing projects; purchasing property and leasing it back to developers; producing excess units for credit purchases; allowing for creative off-site solutions; and preparing a housing element that identifies sites for increased density or rezoning for residential development.

## How can the public get more information and provide input?

On January 9, 2014, the city's Housing Commission recommended approval of the proposed fee. Information about the affordable housing mitigation fee, including the nexus study and staff analysis is available on the Housing Commission's website at <http://www.carlsbadca.gov/cityhall/clerk/meetings/boards/housing.asp>

The City Council will consider this recommendation at a public hearing in spring 2015.